



July 2, 2018

**HHS FOIA Request: 2018-00216-FOIA-OS**

**Legal Case: 1:18-cv-00466-CRC**

Ms. Katie O'Connor, Esq.  
Campaign for Accountability  
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Washington, D.C. 20003

Via E-mail: [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org)

Dear Ms. O'Connor:

This letter is the first interim response to your November 8, 2017, Freedom of Information Act (FOIA)<sup>1</sup> request, which you sent via electronic mail to the attention of Michael Marquis, FOIA Director, Department of Health and Human Services (HHS or Department). In accordance with the June 4, 2018 minute order of the Court, our agency will be providing rolling responses to your FOIA request in accordance with the Court-established schedule, as we continue with our review of the records located. This letter constitutes our first response for the records we have reviewed to date.

Within your FOIA request, you sought four itemized categories of records as described below, for the time period of January 20, 2017, to the date the records search began:

- 1) All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the Affordable Care Act ("ACA").
- 2) All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the ACA.
- 3) All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council

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<sup>1</sup> 5 U.S.C. § 552

regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.

4) All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.

Upon receiving your request, the Department conducted a search of the e-mail accounts and calendars of the HHS staff members who would customarily maintain these categories of records, if existent. As a result of that search, over four gigabytes of records in personal storage table (.pst) format were located which may be potentially responsive to your request; however, those records require further review to determine whether they are indeed responsive. At this time, we have reviewed over 400 e-mails and calendar entries, with an approximate size of 516 megabytes. Those e-mails, calendar entries and attachments, after conversion from the .pst file format in which they were provided to our office to a page-countable format, totaled 22,682 of records.

Of the records which we have reviewed to date, only a small number were responsive to any of the four items of your request. Specifically, six (6) pages of records were responsive, and after a careful review, we have made the following disclosure determination for those pages:

- Three (3) pages are being released in full, and;
- Three (3) pages are being released with redactions under FOIA Exemption 6.

### **Exemption 6**

FOIA Exemption 6 permits a federal agency to withhold information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." The United States Supreme Court has held that Congress intended the term "similar files" to be interpreted broadly, rather than narrowly.<sup>2</sup> The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information" and opined that information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection. In analyzing these records, we find they meet this threshold requirement of the Exemption.

When a privacy interest is found to exist, the public interest in disclosure of the information, if existent, must be examined and weighed against the privacy interest in nondisclosure. In this case, certain e-mail addresses and telephone numbers were redacted under this Exemption. The release of this information would not serve to enhance or increase the public understanding of government functions, but would pose a harm to privacy interests, and thus the invocation of Exemption 6 is appropriate.

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<sup>2</sup> *United States Department of State v. Washington Post Co*, 456 U.S. 595 (1982)).

We are continuing to review the records located in response to your FOIA request, and as stated above, will be responding to your FOIA request with subsequent productions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. S. Marquis", with a stylized flourish at the end.

Michael S. Marquis  
Director  
Division of Freedom of Information \ Privacy Acts

Enclosure

cc: Jason T. Cohen, Esq.  
A. Mackenna White, Esq.  
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